IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1340 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL SATTAR GANIBHAI MEGHREJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1340 of 2003

MR EE SAIYED for Petitioner No. 1

MR V M Pancholi, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/07/2003

ORAL JUDGEMENT

The petitioner abovenamed has preferred this petition under section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') in order to quash a FIR being Cr.I-48 of 2002 filed before Modasa Town Police Station at Modasa for offence punishable under sections 143, 144, 147, 149, 324 and 307 of IPC read with section 135 of the Bombay Police Act, 1951.

2. It has been alleged in the said FIR placed at page no.9 that about 60 to 70 persons belonging to a particular community formulated unlawful assembly, the common object of which was to cause grievous hurts to different persons by way of deadly weapons and chemicals. The incident is said to have taken place on 4.4.2002 at 15.15 hours and the FIR has been filed on the very day at 19.45 hours. However, names of the accused persons have not been disclosed since it is reported to be a mob of 60 to 70 persons. However, during the course of investigation, the petitioner was arrested and ultimately charge sheet was filed before the concerned court and it has been registered as Criminal Case No.2621/2002. The petitioner has contended in this petition that his name has been wrongly shown in the charge sheet as accused person but he has not committed any offence and he was not present in the mob. That even looking at the police papers, no offence is made out against the petitioner and, therefore, the FIR filed against him may be quashed.

3. Rule was issued and in response to the service of notice of Rule, Mr V M Pancholi, learned APP appears on behalf of the State of Gujarat. I have heard the learned Advocates for the parties and perused the papers. The petitioner has also submitted synopsis as to the facts situation in the matter. It is taken on record. On going through the said synopsis, the police papers with the charge sheet and on hearing the learned Advocates for the parties, it is clear that the aforesaid offence has been registered without naming the accused pesons. It is also revealed that not less than 13 witnesses have been named in the charge sheet as follows:

Name	Date of statment
1. Shri Gopalbhai R Patel	4.4.2002
2. Shri Ranchodbhai Patel	5.4.2002
3. Shri Ashok Kumar Daggar	5.4.2002
4. Shri Vipul Kumar Shivlal	5.4.2002
5. Shri Manilal Macwana	5.4.2002
6. Shri Hareshbhai Jayantilal	5.4.2002
7. Shri Sanjay Kumar K Pasad	10.4.2002
8. Shri Ramanlal sagar	12.4.2002

9. Dr. Manharlal 12.4.2002
10. Shri Pankajbhai Karsangdas 5.4.&22.5.02
11. Smt. Jagrati Pankajbhai 5.4.2002
12. Shri Abdul Gani Gulam Nabi 3.6.2002
13. Shri Mohd Haneef Gulam Rasul 3.6.2002

It is also found on going through the said statement of the said witnesses that the , name of the petitioner has not been disclosed by any of those witnesses. Then, it appears that the dying declaration of one Pankajbhai was recorded on 5.4.2002. However, therein also the name of the present petitioner was not disclosed. It also appears from the record that Pankajbhai, Ashokbhai, Ranchhodbhai, Prakashbhai, Gopalbhai and Jayantibhai Shah have been shown as injured witnesses. Even their statements do not disclose name of the petitioner. Therefore, on a bare look at the statements of the witnesses and at other materials on record. They do not disclose that the petitioner was present in the mob or that he had any link with the persons involved in the mob or that he was guilty of any criminal conspiracy or that he had shared company of any of them or any person in the mob. Thereby he was not involved in the offence and, therefore, when no ofence is made out even on a bare reading of the charge sheet and other papers, I am of the opinion that this is a fit case for exercising inherent jurisdiction under section 482 of the Code for quashing the said FIR which has been culminated in the charge sheet qua the petitioner. Even the learned APP appearing for the State was not in a position to put his finger on any material on record in order to point out that the petitioner was involved in the above offence directly or indirectly.

4. For the foregoing reasons, when no offence is made out against the petitioner, this petition is allowed. The FIR being CR.No.I-48/2002 and criminal case No.2621 of 2002 filed before learned Judicial Magistrate First Class , Modasa are ordered to be quashed and set aside qua the petitioner and, therefore, the petitioner shall not be prosecuted before the above Court. It is made clear that the above Criminal Case will natually proceed ahead in accordance with law with respect to other accused persons.

Rule is made absolute to the aforesaid extent.

[D P Buch, J.]
msp